

REMARKS

Claims 1-49 are currently pending in the subject application, and are presently under consideration. Claims 1-49 are rejected. Claims 1, 3, 21-24, 26, 28 and 46-49 have been amended. Favorable reconsideration of the application is requested in view of the amendments and comments herein.

I. Rejection of Claims 1-49 Under 35 U.S.C. §112, 2nd Paragraph

Claims 1-49 stand rejected under 35 U.S.C. § 112, 2nd paragraph as being indefinite for failing to particularly point out and distinctively claim the subject matter which applicant regards as the invention. Withdrawal of this rejection is respectfully requested for at least the following reasons.

Claims 1 and 26

The Board of Patent Appeals and Interferences ("BPAI") held that the claims 1 and 26 used "a plurality of software packages" to refer to one particular set of software packages in the preamble of claims 1 and 26 and to a possibly different set of software packages in the next-to-the-last lines of the claims. BPAI Decision, p. 11, lines 1-4. The BPAI concluded: "We find that using the same terminology to define different sets of software packages is ambiguous." The second element of claims 1 and 26 has been amended to recite "one or more software packages of the plurality of software packages." The antecedent basis for "the plurality of software packages" is "a plurality of software packages" appearing in the preamble. Thus, in amended claims 1 and 26, the "executing one or more software packages of the plurality of software packages" establishes a clearly-defined subset of the preamble's "a plurality of software packages." Accordingly, the amendments to claims 1 and 26 eliminate any ambiguity in identifying the different sets of software packages.

The amendments to claims 1 and 26 also remedy another objection by the BPAI that there is "no clear delineation in the claim language showing different subsets of software packages." BPAI Decision, p. 11, lines 8-9. Amended claims 1 and 26 delineate different subsets of

software packages by reciting "the plurality of software packages" and "one or more software packages of the plurality of software packages." Thus, amended claims 1 and 26 are clearly not indefinite. Accordingly, amended claims 1 and 26 are not rejectable under 35 U.S.C. §112.

Claims 21 and 46

The BPAI held that the use of the terms "each software package," "a software package," and "another software package" by themselves did not indicate the set of software packages to which each belonged. BPAI Decision, p. 11, last line - p. 12, line 5. Claims 21 and 46 have been amended to clarify that the "software package" terms recited in the claims 21 and 46 identify the "software packages" as being "of the one or more software packages of the plurality of software packages being executed." Thus, amended claims 21 and 46 are not rejectable under 35 U.S.C. §112.

Claims 23, 24, 48, and 49

The BPAI also held that the set of software packages to which the software packages cited in the claims belong is not identified. BPAI Decision, pp. 12, 13, sections headed **In response to (c) above** and **In response to (d) above**. Claims 23, 24, 48 and 49 have been amended to clarify that the recited "software package" is one "to which a sequence of time intervals has been assigned" thereby precisely identifying its "software package set" origin as "the plurality of software packages" referred to in the "generating" action of claims 1 and 26. Thus, amended claims 23, 24, 48 and 49 are not rejectable under 35 U.S.C. §112.

Claims 3 and 28

The BPAI's objection to these claims is that claims 3 and 28 "merely recites a ' . . . checksum test of a software package's program *memory*,' not the data in the memory." BPAI Decision, p. 13, section headed **In response to (e) above**. Claims 3 and 28 have been amended to recite "data" as the BPAI suggests. Accordingly, amended claims 3 and 28 are not rejectable under 35 U.S.C. §112.

Claims 22 and 47

The BPAI states that "those software packages that are present" requires and does not have an antecedent basis. BPAI Decision, p. 14, section headed **In response to (f) above**. The term "those software packages that are present" is replaced by "the one or more software packages of the plurality of software packages to be executed," thereby precisely identifying the "software packages" that are the subject of claims 22 and 47 using the terminology of claims 1 and 26. Accordingly, claims 22 and 47, as amended, are not rejectable under 35 U.S.C. §112.

For at least the reasons stated above, claims 1-49 are not indefinite. Therefore, withdrawal of this rejection is respectfully requested.

II. Rejection of Claims 1, 8, 23, 25, 26, 33 and 48 Under 35 U.S.C. §102(b)

Claims 1, 8, 23, 25, 26, 33 and 48 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,109,311 to Blum, et al. ("Blum"). Withdrawal of this rejection is respectfully requested for at least the following reasons.

The BPAI's decision sustaining the examiner's rejections of claims 1, 25 and 26 is based on there being "no requirement [in the claims] that a particular sequence of time [intervals] be assigned to a particular software package." BPAI Decision, p. 19, lines 5-6 of first complete paragraph. Thus, claims 1, 25 and 26 have been amended to recite generating a sequence of time intervals to be assigned to each of the plurality of software packages. Moreover, amended claims 1, 25 and 26 each recite that the sequence of time intervals belonging to one software package do not overlap the sequence of time intervals belonging to any other of the plurality of software packages. The "to be assigned" amendments to claims 1, 25 and 26 are supported by at least page 3, lines 1-4 of the Specification. As the BPAI states, the feature that distinguishes applicant's invention from Blum is the assignment of different sequences of time intervals to software packages rather than different time intervals. Thus, amended claims 1, 25 and 26 are not anticipated by Blum. Accordingly, claims 1, 25 and 26, as well as claims 8, 23, 33 and 48

depending therefrom, should be patentable over the cited art, and withdrawal of this rejection is respectfully requested.

CONCLUSION

In view of the foregoing remarks, Applicant respectfully submits that the present application is in condition for allowance. Applicant respectfully requests reconsideration of this application and that the application be passed to issue.

Please charge any deficiency or credit any overpayment in the fees for this amendment to our Deposit Account No. 20-0668.

Respectfully submitted,

Date 2 December 2008

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